

DEPARTMENT OF THE TREASURY

DIVISION OF PROPERTY MANAGEMENT & CONSTRUCTION

State Leasing and Space Utilization

Proposed Readoption with Amendments : N.J.A.C. 17:11-1.1 et seq.

Full text of the proposed readoptions, new rules and amendments follows (additions indicated in boldface **thus**; deletions are indicated in brackets [thus]):

N.J.A.C. 17:11-1.1 Purpose and scope

(a) The Office of Leasing Operations was established by statute under the supervision of the Administrator of the General Services Administration. Pursuant to Reorganization Plan 003-1997 as set out under N.J.S.A. 52:18A-178 et seq., the Office of Leasing Operations and related functions, powers, and duties were transferred to the Division of Property Management and Construction (DPMC). The rules in this chapter are promulgated by the Division of Property Management and Construction of the Department of Treasury to implement the provisions of that law.

(b) The rules require State agencies to account and plan for all operations and programmatic space requirements and to accurately and regularly report these requirements to DPMC.

(c) These rules apply to all State agencies, as defined by N.J.A.C. 17:11-1.3.

N.J.A.C. 17:11-1.2 Source for public information

The public may receive information concerning the State lease program and Requests for Leased Space Proposals (RFPs) by contacting the Director of the Division of Property Management and Construction, PO Box 034, Trenton, New Jersey 08625-0034.

N.J.A.C. 17:11-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Advertisement" means a public notice of a need for available space that is advertised in newspapers, periodicals and/or the internet.

"Change order request" means a document requesting authorization for modification or variation from an original scope of work.

"Committee" means the State Leasing and Space Utilization Committee.

"Construction documents" means the drawings and specifications, as prepared, signed and sealed by licensed architects and engineers, necessary to obtain all applicable permits for the construction/renovation of space and the associated certificate of occupancy. These drawings and specifications may include, but are not limited to, general construction, electrical, plumbing, HVAC, fire protection and telecommunications.

"Cost effective" means the least expensive space procurement alternative that can be demonstrated to conform to criteria provided by DPMC in the Request for Leased Space Proposal and to the operational concerns and restrictions of the State agency.

"**Coterminous** [Co-terminus] amendment" means a change that amends the substance of an existing lease to include additional space and provides that the lease term for the additional space will terminate on the same date as the original lease.

"Disclosure Statement" means a document formulated by DPMC, and required of all lessors seeking to do business with the State, that elicits information related to ownership and other interests in the property, tax liabilities and possible conflicts of interest.

"Division of Property Management and Construction (DPMC)" is the organization formed pursuant to a reorganization which occurred subsequent to the passage of P.L. 1992, c. 130. Pursuant to Reorganization Plan No. 003-1997 (filed May 8, 1997, effective July 7, 1997), 29 N.J.R. 2498(a) (June 2, 1997), Governor Whitman abolished the General Services Administration and reorganized the Department of the Treasury's Division of Building and Construction, Division of Facilities Management, the Office of Real Property Management, and the Office of Leasing Operations into the newly created Division of Property Management & Construction (DPMC) in the Department of the Treasury, and transferred the functions of the General Services Administrator under P.L. 1992, c. 130, to the Division Director (the Director).

"Lease" means the agreement, approved by the Committee in accordance with N.J.S.A. 52:18A-191.4 and N.J.S.A. 52:18A-191.5, and fully executed by the State and the lessor that contains the terms and conditions under which the lessor will provide and the State will take a leasehold interest in certain specified real property.

"Leased space proposal" means the documents formulated by prospective lessors that contain pertinent cost and site information including rental, renovations and services. Leased space proposals serve as the basis for DPMC's evaluation of the cost-effectiveness of each proposal submitted in response to the competitive process.

"Notice of proposed lease (NPL)" means the documents submitted to the Committee prior to the execution of the lease that contain statutorily required information and recommend the proposed lease agreement to the Committee.

"Proposed lease agreement" means the terms and conditions of the leased space proposal submitted by a prospective lessor, as modified by negotiations between DPMC and the prospective lessor, and recommended by DPMC to the Committee.

"Project description" means a brief outline of the State agency's project requirements.

"Property Profile Form (PPF)" means a standardized document formulated by DPMC that provides an overview of property offered to the State by a potential lessor. Information requested on the form includes property size, location, names of property owners and authorized negotiator.

"Renewal option" means a provision in a previously negotiated and approved lease by which the State, at its sole option, may exercise a right to continue to occupy a space for a specified time period beyond the expiration date of the original lease term.

"Request for **Leased Space** [Lease] Proposal (RFP)" means the solicitation document developed by DPMC for a specific space requirement. The RFP consists of a Scope of Work based on the SPR, the time and date specified for the submission, the format of the proposal and other information specified by DPMC.

"Scope of Work (SOW)" means a document developed by DPMC that identifies in detail the components of the space planning request or components of the project description, which the potential lessor must address in the leased space proposal. The SOW outlines the components of

the space as it pertains to construction-related practices and finishes and identifies schedules and cost breakdowns required to be addressed by each potential lessor.

"Space Planning Request (SPR)" means a document developed by DPMC to be completed by State agencies to document pertinent information and justify requests for the authorization, development, procurement and management of space. Information to be provided includes position numbers, employee names and titles, square footage requirements and special program needs, such as site requirements, location, legislative mandates, computer and client space provisions.

"State agency" means any department, division, office, board, commission, council, or bureau in the Executive branch of State government.

"State Space Plan" means the space utilization plan developed by DPMC, in accordance with N.J.S.A. 52:18A-191.3.

"Tenant agency" means any State agency that is occupying a State leased facility.

"Tenant Service Request (TSR)" means a document developed by DPMC and used by a tenant agency to request that DPMC obtain a cost proposal from the landlord or a contract vendor for specific work to be performed for the tenant agency. Information to be provided includes building location, specific need, site of requested service, full description of work, funding source and contact person.

N.J.A.C. 17:11-2.1 Planning and usage

(a) DPMC shall procure and manage all professional services related to the planning and use of space occupied by State agencies, including, but not limited to:

1. Development of project description;
2. Development of space plans and design;
3. Development of parking allotment;
4. Development of Scope of Work;
5. Evaluation of leased space proposals; and
6. Review and approval of all construction documents and construction costs.

(b) Neither officials nor employees of agencies for which DPMC is acquiring (or has acquired) leased space shall, at any time, whether before an SPR is submitted to DPMC or after a lease agreement is executed, directly or indirectly contact lessors for the purpose of making oral or written representations, commitments or agreements with respect to the terms of occupancy of particular space, tenant improvements, alterations and repairs, or payment for overtime services.

N.J.A.C. 17:11-2.2 Occupancy, operation and maintenance

(a) Except as specified in (b) below, DPMC shall procure and manage all services related to the occupancy, operation and maintenance of all leased space, including, but not limited to:

1. Moving services;
2. Security services;

3. Janitorial services;

4. Building management services; and

5. Inspection services.

(b) In those instances where a State agency prefers to complete a particular procurement or manage a particular service, the agency may enter into an agreement whereby the agency may assume certain managerial responsibilities associated with the lease administration.

(c) DPMC shall make periodic site visits to leased property and shall report to the Committee instances of improper use of leased space by a tenant agency, including misuse, abuse and neglect, which pose safety problems and/or damage to the building space by any agency employee, client and/or visitor.

(d) Prior to occupancy of a new leased space, DPMC shall require that the leased space conform with applicable laws, orders, regulations of Federal, State, county or municipal authorities and with any direction or requirement of any public officer pursuant to said laws, orders, regulations, directions or requirements.

N.J.A.C. 17:11-2.3 Negotiations of leases; general

(a) Except as set forth below, after DPMC approves an SPR, it shall negotiate all proposed lease agreements on behalf of the State.

(b) In the event the anticipated cost of a proposed lease agreement does not exceed the time and cost limits established by N.J.S.A. 52:25-23 for temporary needs less than 12 consecutive

months, the proposed lease agreement may be negotiated by the using agency. However, the proposed lease agreement must be approved by DPMC prior to execution of a binding lease.

N.J.A.C. 17:11-2.4 Negotiation of leases in special circumstances

(a) DPMC may elect not to advertise for **RFPs** [leased space proposals] when the Director of DPMC determines that the **SPR** [space planning request] involves such specialized, unique or mandated characteristics or requirements that a competitive process would be unlikely to result in a more cost effective proposed lease agreement.

(b) The requisite specialized, unique or mandated characteristics or requirements are present in, but are not limited to, the following circumstances:

1. DPMC's exercise of a lease renewal option contained in an existing lease;
2. Leases for air monitoring and antenna stations, as defined by the State or Federal governments;
3. Leases negotiated with other governmental entities for space;
4. Month-to-month holdover tenancies when it is anticipated that the continued occupancy will be not more than one year;
5. Short term leases of not more than two years for the continued use of existing facilities where the Director has determined as a matter of business judgment, that the public interest will be best served by such a short-term lease;

6. A **coterminous** [co-terminus] amendment to an existing lease for additional space to house expansion of existing programs that cannot function independently at a separate location;
 7. Leases for an emergency relocation, an interim replacement facility or an emergent need as declared by the applicable commissioner and approved by the Treasurer's office;
 8. Renewals of residential properties leased by the State to eligible State employees as defined by N.J.S.A. 52:31-23 et seq.;
 9. Leases for specialized State facilities;
 10. Leases of out-of-State facilities; or
 11. Leases for parking.
- (c) Leases executed in accordance with this section, with the exception of the renewal option described in (b)1 above, shall be subject to approval by the Committee.

N.J.A.C. 17:11-3.1 Capacity and utilization report

Annually, on a schedule and in a format prescribed by DPMC, each State agency shall verify and report to DPMC the capacity and utilization of all space it owns, leases and subleases, and the employee position information for each site occupied by that State agency, for the current and subsequent fiscal year.

N.J.A.C. 17:11-3.2 Failure to report

In the event a State agency fails to provide current, accurate and complete information as required by N.J.A.C. 17:11-3.1, DPMC may, at the option of the Director, decline to consider the agency's request for space needs until all DPMC requirements are met.

N.J.A.C. 17:11-3.3 Current inventory report of State-owned and leased real property

(a) Annually DPMC shall verify the current inventory of all State owned and State-leased real property including:

1. The site location;
2. The agency holding the title, or, in the case of leased space, occupying the site;
3. The building name; and
4. Square footage, by functional use; in the event the leased space is not occupied, the report shall state the square footage of the vacant space.

N.J.A.C. 17:11-4.1 Requests for space

(a) Prior to acquisition, disposal, increase, decrease or change in utilization of owned, leased and subleased real property, a State agency shall submit an SPR to DPMC for approval.

(b) DPMC shall review the SPR in accordance with the following criteria:

1. The completeness of the document, as defined in this chapter;
2. The accuracy of the information;

3. Compliance with the square footage estimates for State agency space allocation contained in the space utilization plan; and

4. Compliance with DPMC standards for programmatic space demands, as supported by the space utilization plan and the model space descriptions for like or similar functions and any existing legislative mandates.

(c) DPMC shall approve or disapprove all State agency Space Planning Requests and ensure compliance with Statewide standards and related requirements developed by the Department of the Treasury and DPMC.

1. DPMC will evaluate whether the agency's space needs can be met through the consolidation and restacking of State-owned or leased space.

2. DPMC will establish the appropriate catchment area for the agency's space requirements in order to maximize competition.

3. DPMC will establish the agency's parking needs.

(d) The Office of Management and Budget (OMB) shall supply DPMC with a certification that:

1. The employee position information is accurate, according to the current approved budget; and

2. The funds have been allocated to DPMC to cover all costs associated with the lease, including the cost of renovations, for the fiscal year.

(e) In the event an SPR does not meet the criteria or OMB fails to provide the certification referenced in (d) above, DPMC shall disapprove the Space Planning Request and return it to the agency for correction, additional information or justification.

N.J.A.C. 17:11-4.2 Project description

(a) When advertising is required to secure space, or major space alterations are required to meet an agency's needs, DPMC shall develop a project description and/or Scope of Work relating to the Space Planning Request and shall establish a reasonable deadline for its completion.

1. State agencies shall cooperate with DPMC to the extent necessary for the timely development of the project description or Scope of Work and shall certify in writing their agreement with the content of the completed documents.

2. In the event a State agency does not provide accurate information or the cooperation necessary for the development of the project description or Scope of Work, DPMC may suspend the space procurement process until such time as the accurate information and requisite cooperation shall be forthcoming, notwithstanding any prior SPR approval.

3. DPMC may refuse a State agency's request to modify the content of the project description or Scope of Work if the request is received by DPMC beyond the established deadline.

4. When more than one State agency requests space that is similar in specifications and size, DPMC may employ in whole or in part a generic project description or Scope of Work in connection with any SPR.

N.J.A.C. 17:11-4.3 Occupancy of space after approval of SPR

(a) Upon approval of an SPR requesting additional space, DPMC shall direct the State agency to occupy the most effective, efficient and economical State-owned or leased space available that meets the specifications of the requesting State agency.

(b) If State-owned or leased space meeting the specifications of the requesting State agency is not available, DPMC shall pursue the most advantageous means of accommodating the request.

(c) In the event DPMC determines that leasing of additional space is in the best interests of the State, DPMC will advertise for available properties in accordance with **N.J.A.C. 17:11-5.1** [N.J.A.C. 17:11-5], unless it determines not to advertise pursuant to N.J.A.C. 17:11-2.4.

(d) A State agency shall notify DPMC in writing of any change in or withdrawal of an SPR. A State agency's decision to change or withdraw an SPR after DPMC's receipt of a leased space proposal shall be reviewed by DPMC. If the change or withdrawal is deemed unreasonable by DPMC, it shall assess the State agency for all expenses resulting directly from the change, any expenses incurred prior to the withdrawal of the SPR, or any rent payable for space procured prior to the withdrawal, to the extent the space cannot be used by another State agency.

N.J.A.C. 17:11-5.1 Advertising process

(a) Except as described in N.J.A.C. 17:11-2.4 and 5.1(c), DPMC must advertise for each of its leased space needs on its website and place an advertisement for same in the "Commercial Real Estate Wanted" or similar section of the applicable regional newspaper(s).

(b) In addition, DPMC will periodically place a general advertisement in the "Commercial Real Estate Wanted" or similar section of regional newspapers to alert potential lessors of the

existence of the DPMC website and potential leasing opportunities. In the advertisement, DPMC will solicit the submission of a PPF for its leased space needs.

(c) When the State has a need for leased space that is less than 20,000 square feet, DPMC may advertise exclusively on its website for that need. DPMC will also consider the PPFs in the file that were generated by the advertisement process described in (b) above and may also canvass the area for available leased space.

N.J.A.C. 17:11-5.2 Property Profile Form (PPF)

Upon request, DPMC shall provide a Property Profile Form to potential lessors, to be completed and returned to DPMC. Submission of a PPF form will allow DPMC to maintain a database of potentially interested lessors. Failure to submit a PPF will not render a potential lessor's response to a lease solicitation ineligible. Potential lessors shall annually resubmit a PPF to DPMC to ensure continued consideration by DPMC.

N.J.A.C. 17:11-5.3 Who is eligible to submit a PPF

(a) For responses received in accordance with this subchapter to be eligible for further consideration, the potential lessor must be:

1. The owner or owner's designated representative;
2. The holder of a purchase option; or

3. An attorney or real estate broker with written authority to negotiate and act as attorney in fact for an owner or holder of a purchase option.

N.J.A.C. 17:11-5.4 DPMC review of completed PPFs

(a) DPMC shall review the PPFs contained in its database to determine the property's eligibility for further consideration for a particular leased space need based on size and location. DPMC shall remove from consideration those properties that do not meet the threshold criteria.

(b) Nothing in this section shall prevent DPMC from exploring all potential options for generating competition or accelerating the process for a particular leased space requirement, including, but not limited to, by-passing the PPF process, soliciting leased space proposals per N.J.A.C. 17:11-5.1(a) and then entering into direct negotiations with two or more of the most cost effective and responsive proposals in accordance with N.J.A.C. 17:11-6.10.

N.J.A.C. 17:11-6.1 Proposal request

(a) For each property deemed eligible for further consideration, DPMC will provide the potential lessor with a copy of the RFP including the Scope of Work developed for the SPR. DPMC will establish the time, date and format in which the leased space proposal is to be submitted.

(b) All potential lessors submitting leased space proposals to DPMC shall hold available to the State those properties under consideration for a minimum of 90 days after the submission date or as otherwise specified by DPMC.

N.J.A.C. 17:11-6.2 Proposal submission

DPMC will not consider leased space proposals unless they are submitted on or before the specified time and date required by the RFP and contain all information requested by DPMC.

Unless the RFP specifically states otherwise, a leased space proposal shall not be submitted by telephone, telegraph, facsimile or other electronic means.

N.J.A.C. 17:11-6.3 Extension of time to submit proposal

All leased space proposals not received prior to or at the time designated for formal opening of leased space proposals shall be rejected. However, the Director may extend the time for opening at the request of a potential lessor who notifies DPMC that he or she intends to submit a leased space proposal and gives valid reasons why he or she will not meet the formal opening date. The potential lessor making this request shall do so in writing and specify the length of additional time requested. The written request must be received by DPMC no later than one week prior to the deadline. All potential lessors shall be notified of any extension date. All leased space proposals shall be held and remain sealed until the expiration of the time extension granted by the Director.

N.J.A.C. 17:11-6.4 Prices

(a) A leased space proposal shall include all material price information required by the RFP.

Prices shall be typewritten, photocopied, or written in ink or some other indelible substance.

(b) Unless the RFP states otherwise, the prices submitted shall remain effective for 90 days after the opening date, subject to any negotiations conducted in accordance with **N.J.A.C. 17:11-6.10** [N.J.A.C. 17:11-6.11].

N.J.A.C. 17:11-6.5 Withdrawal of proposal

(a) Prior to the opening of the leased space proposals, a potential lessor may, for any reason, request the withdrawal of his or her leased space proposal. The request shall be made in writing to DPMC and shall be signed by a person authorized to submit the proposal pursuant to N.J.A.C. 17:11-5.3. Proof of authorization shall accompany the request.

(b) After the opening of the leased space proposals, if either the potential lessor or DPMC discover a material error in a leased space proposal, the potential lessor may request the withdrawal of the leased space proposal. If the error is discovered by DPMC, the Division will notify the potential lessor in writing, and the potential lessor will have five working days from receipt of the notice to request withdrawal of the proposal. Any submission from the potential lessor shall be addressed to DPMC, and shall be signed by a person authorized to submit the leased space proposal (see N.J.A.C. 17:11-5.3). DPMC will return the leased space proposal if the potential lessor can demonstrate that he or she exercised reasonable care in preparing and submitting the leased space proposal, and that it would be unconscionable for the State to enforce the proposed lease agreement. The decision to grant or deny any such request shall be at the sole discretion of the Director.

N.J.A.C. 17:11-6.6 Correction of pricing error

(a) DPMC shall correct a pricing error in a leased space proposal under the following circumstances:

1. Where the leased space proposal contains an obvious computational error, DPMC shall correct the potential lessor's faulty addition, subtraction, multiplication or division. Any error must be obvious on its face, and any correction must be consistent with internal evidence in the leased space proposal.
2. Unless the RFP states otherwise, or the result would be unconscionable, where a leased space proposal contains a discrepancy between a unit price and a total price based on those units, the unit price shall govern. Where the leased space proposal contains any other price discrepancy, DPMC shall determine the price if the leased space proposal contains clear evidence of the intended price.

N.J.A.C. 17:11-6.7 Verification of proposal

DPMC may seek information outside of the leased space proposal to verify the accuracy and responsiveness of the leased space proposal, and the responsibility of the potential lessor. DPMC may request such information from the potential lessor, from public records, or from others familiar with the potential lessor or the space. Such information may clarify, but not modify, a leased space proposal. Such investigation may include, but shall not be limited to, contacting the potential lessor's surety companies, financial institutions, prior lessees or visiting the potential lessor's place of business and property sites.

N.J.A.C. 17:11-6.8 Rejection and re-advertisement of proposal

DPMC reserves the right to reject all leased space proposals and to re-advertise if insufficient competition results from the initial advertisement, if the price is unfavorable to the State in the current market, or for any other compelling reason.

N.J.A.C. 17:11-6.9 Evaluation

DPMC shall evaluate each leased space proposal received in accordance with this subchapter and shall identify the proposals determined to be responsive to all material elements set forth in the Scope of Work which are cost effective and best able to fulfill the space need as defined in the Scope of Work.

N.J.A.C. 17:11-6.10 Negotiations

DPMC shall negotiate with the potential lessors that submit the most cost effective and responsive leased space proposals. DPMC reserves the right to exclude those proposals that do not appear to be either cost effective or responsive based on the initial submissions. DPMC shall recommend to the Committee the one (1) potential lessor who will provide the most cost effective proposed lease agreement which will best serve the interests of the State.

N.J.A.C. 17:11-6.11 Notice of recommendation to the Committee

DPMC shall give notice to all potential lessors of the particular leased space proposal to be recommended to the Committee prior to submission of a final recommendation to the Committee. Challenges to the notice of intent to recommend a particular proposed lease agreement shall be submitted in writing to the Director of DPMC, within 10 working days from the date of the letter giving notice of the intent to recommend. After receipt of a challenge, DPMC may decide not to recommend a leased space proposal to the Committee.

N.J.A.C. 17:11-6.12 Documents considered public information

Subsequent to DPMC's issuance of notice to all respondents of its intent to recommend a proposed lease agreement to the Committee, the documents submitted by potential lessors (excluding those items exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq.) shall be considered public information, notwithstanding any disclaimers submitted by the potential lessors to the contrary.

N.J.A.C. 17:11-7.1 Notice of proposed lease (NPL)

(a) Upon completion of the advertisement process for requests for proposals for leased space proposals and the consequent identification of the most cost effective proposed lease agreement under consideration, DPMC shall prepare a notice of proposed lease (NPL) for submission to the Committee. The NPL shall include the following information (or an explanation as to why such information is not applicable):

1. The approved State agency SPR;

2. A statement setting forth the terms and conditions of the proposed lease agreement;
3. A statement setting forth the cost of the proposed lease agreement, including the cost of rent, taxes, renovation, operating expenses and other costs involved in the proposed lease agreement;
4. A statement from the Attorney General that the proposed lease agreement under consideration is not in conflict with any applicable State or Federal law or regulation;
5. A statement certifying that, on the basis of a comparison of costs and an analysis of financing, the proposed lease agreement is cost effective and in compliance with the space utilization master plan;
6. Except as permitted by N.J.A.C. 17:11-2.4, a statement certifying that DPMC advertised for competitive proposals for the proposed lease agreement and that the proposed lease agreement under consideration is the most cost effective; and
7. A statement from the Director of the Office of Management and Budget in the Department of the Treasury certifying that funds have been appropriated to DPMC to cover all costs associated with the proposed lease agreement, including the cost of renovations, for the fiscal year.

N.J.A.C. 17:11-7.2 Decision of the State Leasing and Space Utilization Committee

Upon its receipt of the NPL, the Committee shall approve or disapprove in writing the proposed lease agreement under consideration or send the proposed lease agreement back to DPMC with a written request for additional information.

N.J.A.C. 17:11-7.3 Validity of lease agreement

No proposed lease agreement negotiated by DPMC shall be valid without the prior written approval of the Committee or before it is fully executed by the parties.

N.J.A.C. 17:11-7.4 Execution of lease

No lease will be executed prior to the approved prospective lessor's completion of all work plans and specifications required by DPMC.

N.J.A.C. 17:11-7.5 Cancellation of an NPL

Any request by a State agency for cancellation of an NPL subsequent to Committee approval and prior to execution **of the Lease**, must be submitted in writing to the Director of DPMC. The Director may, at his or her discretion, grant or deny the request and assess the State agency for any expenses to the State resulting directly from the cancellation, including, but not limited to, planning and or construction costs and any rent payable.

N.J.A.C. 17:11-8.1 **Hearings** [Informal hearings]; subject matter

(a) The purpose of this subchapter is to provide the procedures that govern the challenge of an action of the Director in the denial of a leased space proposal, the issuance of a recommendation to the Committee for leased space or regarding the application of the lease terms. All references to the "Director" in this subchapter include the Director's designee.

1. "Protest" is defined as an objection by a potential lessor, set forth in writing in accordance with N.J.A.C. 17:11-8.2, to a determination that the potential lessor's proposal was non-responsive and/or untimely.

2. "Challenge" is defined as an objection by a potential lessor, set forth in writing in accordance with N.J.A.C. 17:11-8.3, to the decision of DPMC of its intent to recommend another party's proposal to the Committee.

[3. "Dispute" is defined as a disagreement between the DPMC and the lessor regarding the application of the lease terms.]

(b) Protests of the type described in this subchapter, for the purpose of this chapter, are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

N.J.A.C. 17:11-8.2 Protest procedures; rejection of a leased space proposal

(a) A potential lessor, after submitting a Leased Space Proposal in response to an advertised RFP pursuant to N.J.S.A. 52:18A-191.1 et seq., may submit a written protest to the Director if the leased space proposal is rejected for being non-responsive or untimely submitted.

(b) A potential lessor, after submitting a proposal in response to an advertised RFP and finding cause to protest the rejection of the proposal pursuant to (a) above, shall make written request to the Director, setting forth, in detail, the specific grounds for protesting the rejection. The protest shall be filed within 10 working days following the potential lessor's receipt of written notification that its proposal has been rejected for being non-responsive or untimely.

1. A protest regarding the Director's decision to reject a leased space proposal shall contain the following items:

i. Identification of the SPR number;

ii. All arguments, materials and/or other documentation that may support the protester's position that the leased space proposal should not have been rejected; and

iii. A statement as to whether the protester requests an opportunity for oral presentation and the reason(s) for the request.

2. The Director may disregard a protest not containing all of the items set forth in (b)1 above.

3. The Director may disregard any protest filed after the 10-day protest period.

(c) The Director shall, upon receipt of a timely protest to the rejection of a proposed lease agreement, issue a final written decision on the protest prior to making a determination of the most cost effective **site** [sites].

1. The Director has sole discretion to determine if an oral presentation by the protester is necessary to reach an informed decision on the matter(s) of the protest. Oral presentations are fact-finding for the benefit of the Director. The Director has the discretion to establish the scope and format of such presentations and to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the protest.

2. The Director [may] **shall either** perform a review of the written record or conduct an oral presentation directly, [or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments

or exceptions to the Director. Subsequent to the 10-day period for comments or exceptions, the Director] **and thereafter** shall make a final written decision on the matter.

N.J.A.C. 17:11-8.3 Challenge procedures; challenge to a notice of proposed lease

(a) A potential lessor, after submitting a leased space proposal in response to an advertised RFP pursuant to N.J.S.A. 52:18A-191.1 et seq., may submit a written protest to the Director when another party's proposed lease is recommended to the Committee for approval.

(b) A potential lessor, after submitting a proposal in response to an advertised RFP and finding cause to challenge the decision to recommend another party's leased space proposal, shall make written request to the Director, setting forth, in detail, the specific grounds for challenging such decision. The challenge shall be filed within 10 working days following the potential lessor's receipt of the award decision.

1. A challenge regarding the Director's decision to recommend a lease shall contain the following items:

i. Identification of the lease number;

ii. All arguments, materials and/or other documentation that may support the challenger's position that the proposed award should be overturned; and

iii. A statement as to whether the challenger requests an opportunity for oral presentation and the reason(s) for the request.

2. The Director may disregard a challenge not containing all of the items set forth in (b)1 above.

3. The Director may disregard any challenge of the decision to recommend another party's leased space proposal filed after the 10-day challenge period and proceed with the leased space recommendation to the Committee.

(c) The Division shall, except as set forth in (e) below, hold all recommendations to award for 10 days pending protests from potential lessors. If the recommendation is challenged as set forth herein, the Division shall not present the matter to the Committee until a final decision is rendered by the Director on the merits of the challenge. [The Director may present the recommendation to the Committee, notwithstanding the receipt of a challenge pursuant to the above provisions, if the failure to award the lease shall result in substantial cost to the State or if the public exigency so requires. In such event, the Director shall notify all interested parties.]

(d) Any challenge which satisfies all requirements set forth in (a) through (c) above, shall be resolved by written decision of the Director on the basis of the Director's review of the written record including, but not limited to, the written challenge, the terms, conditions and requirements of the RFP and Scope of Work, the proposals submitted in response to the RFP, pertinent administrative rules, statutes and case law, and any associated documentation the Director deems appropriate. Such review of the written record shall, in and of itself, constitute an informal hearing.

1. The Director has sole discretion to determine if an oral presentation by the challenger is necessary to reach an informed decision on the matter(s) of the challenge. Oral presentations are fact-finding for the benefit of the Director. The Director has the discretion to establish the scope and format of such presentations, determine the appropriate means of recording the process, and

to limit attendance at an oral presentation to those parties likely to be affected by the outcome of the challenge.

2. The Director [may] **shall either** perform a review of the written record or conduct an oral presentation directly, [or may appoint a hearing officer. In the case of the latter, the hearing officer's report shall be advisory in nature and is not binding on the Director. All parties shall receive a copy of the hearing officer's report and shall have 10 days to provide written comments or exceptions to the Director. Subsequent to the 10-day period for comments or exceptions, the Director] **and thereafter** shall make a final written decision on the matter.

(e) The Director may, in instances where public exigency exists or where there is potential for substantial cost benefit or other such advantage to the State, modify or amend the time periods noted in this subchapter. In these instances, the Director shall give adequate notice to the parties involved.

N.J.A.C. 17:11-8.4 Discovery procedures

Notwithstanding any provisions to the contrary, the Director is entitled to request, receive and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the protest, challenge or dispute. Upon receipt of the Director's request, the party filing the protest, challenge or dispute shall promptly provide the requested records and documents free of charge in the time, place and manner specified by the Director. Failure of the party to comply with this section may, at the reasonable discretion of the Director, constitute sufficient basis to resolve the protest, challenge or dispute against such party. The

Director may also consider relevant information requested and received from other parties deemed appropriate by the Director.

N.J.A.C. 17:11-9.1 Approval of construction documents

- (a) The prospective lessor shall provide construction documents to DPMC for approval within the time frames established by DPMC.
- (b) DPMC shall coordinate the review of the construction documents with the tenant agency, but shall retain the sole authority for approving all construction documents.
- (c) DPMC may engage a design professional and/or contractor to begin design and/or construction work, as applicable, on the demised premises, in advance of the execution of the lease up to the dollar amount permitted by N.J.S.A. 52:34-7(a).

N.J.A.C. 17:11-9.2 Notice to proceed with work

DPMC shall have sole authority for issuing a notice to proceed with any construction or renovation work prior to occupancy of a new site. Issuance of a notice to proceed will only be granted after the Committee has approved the NPL and the proposed lease agreement has been signed by the lessor.

N.J.A.C. 17:11-9.3 Change order

(a) Any State agency requiring a change to an authorized construction project prior to occupancy shall submit a change order request to DPMC describing the needed change and reason for such change. DPMC shall approve a change order request if it meets the criteria established by DPMC, which criteria include the following:

1. Compliance with all applicable codes;
2. Compliance with SPR approvals and the State Space Plan;
3. Compliance with executed lease documents;
4. Availability of funding by the agency; and
5. No adverse impact on construction or occupancy schedule.

(b) In the event a change order cannot be approved because it does not meet the established criteria, DPMC shall assist the agency in developing an acceptable alternative, if necessary.

(c) DPMC has sole responsibility for the authorization of any change orders.

N.J.A.C. 17:11-9.4 Requests for renovation

Any State agency requesting renovations to a leased building in which it is a tenant shall conform to the provisions of **N.J.A.C. 11-12.3** [N.J.A.C. 17:11-11.3].

N.J.A.C. 17:11-10.1 Acquisition of furniture

No tenant agency shall acquire loose or systems furniture for use in any State-owned or leased space without the prior approval of DPMC, unless the tenant agency has its own statutory authority to make such purchase.

N.J.A.C. 17:11-10.2 Relocation of furniture

No tenant agency shall relocate loose or systems furniture in any State-owned or leased space, unless the relocation is only of agency purchased furnishings and between existing department spaces, and such relocation has been approved by DPMC, based on the State Space Plan and the agency SPR.

N.J.A.C. 17:11-11.1 Submission of disclosure statement

All lessors under contract with the State through DPMC shall annually submit an updated Disclosure Statement to DPMC, which statement shall include an updated certification of taxes.

N.J.A.C. 17:11-11.2 Tenant complaints and lessor compliance issues

DPMC shall be the liaison between the tenant agency and the lessor. All complaints and compliance issues shall be directed to DPMC for resolution.

N.J.A.C. 17:11-12.1 Tenant compliance with lease

A tenant agency utilizing premises leased by the State shall at all times comply with the terms of the lease and with the requirements of this chapter.

N.J.A.C. 17:11-12.2 Repair costs

A tenant agency shall be responsible for costs to repair damages to premises caused by the agency, its clients or invitees. DPMC shall determine the extent of damages and take actions to have repairs made.

N.J.A.C. 17:11-12.3 Renovations

(a) A tenant agency desiring to make renovations to leased or owned space shall submit a TSR to DPMC for approval.

(b) DPMC shall evaluate the TSR in accordance with the following criteria:

1. Compliance with applicable laws, regulations, fire and safety codes, ADA, UCC and zoning restrictions;
2. Proposed cost;
3. Consistency with terms and conditions of the lease;
4. Consistency with the approved SPR; and
5. Availability of funds.

N.J.A.C. 17:11-12.4 Notification of lessor non-compliance

All tenant agencies shall notify DPMC of any failure by a lessor to comply with the terms and conditions of the lease or of deficiencies in the leased space. Notification shall be by telephone or in writing, as appropriate. No tenant agency shall initiate corrective action without prior DPMC approval.

N.J.A.C. 17:11-12.5 DPMC investigation of complaints

In the event a tenant agency is directed to respond to a PEOSH or other life safety complaints and requests DPMC assistance, DPMC shall investigate and shall direct the appropriate party to resolve those items deemed by DPMC to be such party's responsibility, in accordance with the terms of this chapter and the specific lease agreements.

N.J.A.C. 17:11-12.6 Environmental contamination of the premises

In the event that a currently occupied space is contaminated, the occupying agency shall be responsible for the appropriate notifications, coordination with the Department of Environmental Protection (DEP), testing, reporting and abatement. The tenant agency is responsible for obtaining a Certification of Negative Declaration of Approval or a No Further Action Letter and Covenant Not to Sue from DEP. The DEP requirements are fully described in DPMC's policy and procedure governing this issue.

N.J.A.C. 17:11-13.1 Approval to vacate

(a) No tenant agency shall vacate a leased facility without the prior approval of DPMC. DPMC will approve a tenant agency's request to vacate when:

1. Alternate space is identified and secured by DPMC for the tenant agency;
2. Funds are no longer available; or

3. There is a more cost effective utilization of the leased space in accordance with the approved space utilization plan.

(b) DPMC shall be entitled to charge any agency, which vacates a leased facility without prior DPMC approval for all costs and fees associated with that facility until said vacated space can be otherwise utilized by DPMC.

(c) No moving services shall be contracted for or performed by a tenant agency without DPMC approval.

(d) In the event that a vacated lease site is contaminated, the vacating agency shall be responsible for the appropriate notifications, coordination with the Department of Environmental Protection (DEP), testing, reporting and abatement. The tenant agency is responsible for obtaining a Certification of Negative Declaration of Approval or a No Further Action Letter and Covenant Not to Sue from DEP. The DEP requirements are fully described in DPMC's policy and procedure governing this issue.

N.J.A.C. 17:11-13.2 Condition of vacated premises

A tenant agency vacating a leased facility shall leave the facility in broom clean condition, with the exception of reasonable wear and tear and any condition due to force majeure. The vacating tenant agency shall bear the cost, if any, of returning the facility to broom clean condition under the direction of DPMC.

N.J.A.C. 17:11-14.1 Debarment/suspension

DPMC may suspend or debar a lessor or potential lessor in accordance with the procedures set forth in N.J.A.C. 17:19-3 and 4.

N.J.A.C. 17:11-15.1 Waiver

DPMC may waive any provision of the rules promulgated in this chapter, when it determines that the application of these rules would impair expeditious location or relocation of a State agency or a tenant agency necessitated by health, safety, environmental concerns, the requirements of an Executive Order or legislation, or eviction or demand for possession by lessors.